IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FOURTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

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WRIT PETITION NO: 18484 of 2004

Between:

The Kavali Mandal Chowkadharala Dukanamula Dealerla Sankshema Sangham, Kavali, D.No. 11-33-947A, Vengalrao Nagar,Kavali, Nellore District, rep. by its Honorary President, I. Seetarama Rao S/o Kotaiah.

.... PETITIONER

AND

1)The Government of Andhra Pradesh, rep.by its Principal

Secretary, Department of Civil Supplies, Secretariat,

Hyderabad.
2)The District Collector, Nellore District, Nellore.
3)The Joint Collector, Nellore District, Nellore.
4)The Revenue Divisional Officer, Kavali, Nellore District.
5)The Mandal Revenue Officer, Kavali, Nellore District.
6)The Civil Supplies Deputy Tahsildar, Kavali, Nellore District.
7)A. Radhakrishnaiah,
R/o Vengalrao Nagar, Kavali, Nellore District.
8)Shaik Valli Saheb, R/o Vengalrao Nagar, Kavali.
9)Shaik Pakeer Saheb, R/o Vengalrao Nagar, Kavali.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction particularly one in the nature of Writ of mandamus declaring the proceedings of the Joint Collector, Nellore,Nellore District, the 3rd respondent herein issued in Ref.Rc.C. 449/2004 dated 16-9-2004, thereby revising the allotment of Kerosene between Fair Price Shop Dealers and Conventional

Dealers in Kavali Municipal Area as arbitrary, illegal and contrary to the G.O.Rt.No. 419 F&A (CS-IV) Department, dated 19-4-1983 and various Government Memorandum issue thereafter and also contrary to the Judgment of this Hon'ble Court passed in W.P.No. 8201 of 1994 and batch dated 29-2-1996 and pas such other order or orders as this Hon'ble Court may deem fit and proper.

Counsel for the Petitioner: MR.M.RAVINDRANATH REDDY

Counsel for the Respondent Nos.1 to 6: GP FOR CIVIL SUPPLIES

Counsel for the Respondent No.7: O.Manohar Reddy

The Court at the stage of admission made the following:

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ORAL ORDER: -

The 7th respondent filed W.V.M.P.No.3260 of 2004 seeking vacation of the interim order, dated 25.10.2004, granted in W.P.M.P.No.24310 of 2004, whereby, the proceedings impugned in the writ petition were suspended. Learned single Judge of this Court, by order, dated 19.11.2004, modified the interim direction granted on 25.10.2004, with a direction to follow the "procedure as adopted in the preceding month" relating to allotment of kerosene between fair price shops and conventional dealers. Aggrieved whereby, the writ petitioner preferred W.A.No.1909 of 2004. The Division Bench by order, dated 01.12.2004 allowed the appeal, set aside the order, dated 19.11.2004, and remanded the matter (W.V.M.P.3260 of 2004) for consideration afresh.

2. Having heard learned counsel for the petitioner Sri Ravindranath Reddy and learned Government Pleader for respondents 1 to 6 and Sri O. Manohar Reddy, learned counsel for the 7th respondent, and having regard to the fact that the issues falling for consideration in the vacate application are substantially the same that arise in the adjudication of the main writ petition, the writ petition itself is taken up for adjudication and disposed of by this order.

3. The Kavali Mandal Chowkadharla Dukanamula Dealerla Sankshema Sangham, Kavali, assails the proceedings of the third respondent, dated 16.9.2004, on the ground that the orders therein are arbitrary, illegal and contrary to the orders of the State Government, first respondent, in G.O.Rt.No.419 Food & Agriculture (CS.IV) Department, Dated 19.04.1983, and various Government Memorandii, and contrary to the judgment, dated 29.02.1996 of this Court in W.P.No.8201 of 1994 and batch.

4. The petitioner claims to be an Association that has come into being for protection and welfare of the fair price shop dealers of Kavalli town and Mandal. In the State, including in Kavali town and mandal for some time fair price shops, hawkers and conventional dealers have been vending kerosene meant to be supplied, under the Public Distribution System (P.D.S.). On account of this position, there was regnant conflict of commercial interests between fair price shop dealers on the one hand, and the hawkers and conventional dealers on the other, in respect of vending of P.D.S kerosene. Responding to representations from these two classes of vendors of P.D.S kerosene, the State Government also pitched in, by issuing a succession of policy guidelines as to the distribution of P.D.S kerosene by the fair price shop dealers and/or conventional dealers and hawkers as also for curbing the expansion of the class of conventional dealers, which expansion was perceivably to the detriment of the commercial interests of fair price shop dealers.

5. In this theatre of conflict, the third respondent entered with the order impugned in the writ petition, dated 16.09.2004 directing as under: -

1. The entire quantity of kerosene meant for Public Distribution System in Kavali Municipality be allotted between the Kerosene Conventional Dealers, and the F.P. Shops, Kavali town in the ratio of 65:35 respectively to maintain uniform allocation in municipal areas of Nellore District.

2. The proposals of the Mandal Revenue Officer, Kavali is changed from the ratio of 60:40 to 65:35 to maintain uniform allocation. The same allocation has been implemented in Nellore Municipality during the year 1998 and it was also confirmed by the Hon'ble High Court of A.P., Hyderabad.

3. The Kerosene Conventional Dealers, Kavali town keep open their kerosene Distribution outlets from 7.30 A.M to 11.30 A.M in the morning and 3.30 P.M to 7.30 P.M in the evening everyday till the distribution of kerosene completed as the timings being maintained by the F.P. Shop dealers. They shall invariably exhibit a board conspicuously at distribution point, indicating the timings stock position and prices.

The Mandal Revenue Officer, Kavali is directed to implement the revised system of distribution of K.Oil in Kavali Municipality as indicated above with effect from October,

2004".

These proceedings are challenged in the writ petition by the petitioner association.

6. According to the petitioner, the order of the Government in G.O.Rt.No.419, dated 19.4.1983, restricts the discretion of the competent authority in the matter of issuance of further licenses to hawkers and conventional dealers, except those genuinely selling kerosene as on 01.3.1983. The Government directions also ordain that such of those hawkers and conventional dealers who are in business, would not be disturbed and that the system of hawkers and conventional retailers of kerosene should not be further extended so to bring about complete cessation of addition of further hawkers and conventional dealers.

7. The petitioner claims that the impugned order of the third respondent is in contravention of this Government order. Petitioner also contends that in W.P.No.8201 of 1994, 9203 and 1334 of 1995, this Court by the judgment, dated 29.2.1996, while allowing the writ petition directed the authorities to cancel the licence granted after the date of the Government order in G.O.Rt.No.419 and further directed that if any existing hawkers discontinue their licence for any reason, they should not be replaced with new licensees, and in due course, steps should be taken to stop supply of kerosene through hawkers and conventional dealers. This judgment was delivered by this Court in writ petitions filed by the fair price shop dealers of Vijayawada.

8. While so, the petitioner association having learnt that the third respondent had passed the impugned order, dated 16.9.2004, allocating kerosene in the ratio of 65:35 between hawkers and conventional dealers vis-à-vis the fair price shop dealers, made a representation to the 5th respondent seeking copy of the impugned proceedings and on receipt of the copy of the impugned proceedings, this writ petition is filed.

9. Though the writ petition is vaguely structured, as submitted by Sri Ravindranath Reddy, the core grievance of the petitioner appears to be as regards the ratio fixed

between conventional dealers/hawkers and the fair price shop dealers at 65:35 in respect of allocation of P.D.S kerosene. Sri Ravindranath Reddy also contends, a contention that does not find place in the pleadings, that conventional dealers and hawkers are not authorized to vend P.D.S kerosene in terms of the extant control order, namely, the 'Andhra Pradesh State Public Distribution System Control Order, 2001 (for short "Order 2001")'.

10. Through G.O.Rt.No.419, dated 19.4.1983, the State Government issued certain guidelines in respect of supply of kerosene. I*nter alia* the guidelines instruct as under: -

"The Government after careful examination of the matter, issue the following guidelines.

1. That all those hawkers who were genuinely selling kerosene as on 01.3.1983 and whose record is clean may be considered for attaching cards and giving a specific place of business where they can sell their kerosene as in Guntur, Vijayawada and Visakhapatnam.

2. The quota to be given would be decided by the Collectors on the above basis of the card attached as they do for the Nominated Retailers and Fair Price shops.

3. Those who had already gone out of business will not be considered.

4. A close watch shall be kept on the hawkers and the interests of the Consumers shall be safeguarded.

5. In course of time Collectors should aim at converting the hawkers into regular Nominated Retailers with shops and try to arrange for them from the various loaning programmes in the district the necessary credit for establishing them in regular business as Nominated Retailers, in particular, those hawkers who show that they are capable of good conduct. This is very important and this should be held out as an incentive and on the basis of good reports they should be converted into regular Nominated Retailers with necessary institutional finance provided.

6. The system of hawkers should not be further expanded by adding any new

hawkers, but only those who were actually in the business as on 1-3-1983 should be considered and a complete stop put to any further hawkers being added.

7. Necessary licences etc. should be given and all the conditions applying to Nominated retailers should apply to the hawkers. The interest of consumers shall be kept permanent in dealing with any representatives of hawkers.

The District Collectors in the State and Chief Rationing Officer, Hyderabad are requested to follow the above guidelines."

Subsequent guidelines had been issued by the State Government reiterating in core, the instructions set out in G.O.Rt.No.419, dated 19.4.1983.

11. By the judgment of this Court, dated 29.2.1996, in W.P.No.9203 of 1995 and batch, this Court issued certain directions to the District authorities of the Civil Supplies. These directions were issued in the context of certain guidelines issued by the State Government in Memo, dated 26.4.1994. Even, on behalf of the petitioner, it is not contended that the directions issued by this Court supra should be construed as the immutable legal architecture governing the allocation of P.D.S kerosene between various classes of competent licensees/authorizees. Sri Ravindranath Reddy, learned counsel for the petitioner would not demur from the legal position that such allocation should be governed by the relevant control order in operation and any other policy instructions issued by the State, within the scope of its discretion and power, under the governing legal architecture (the control order).

12. Order, 2001 has been issued in G.O.Ms.No.16, Food, Civil Supplies and Consumer Affairs (CS-1), dt.6th April, 2002, and published in the A.P. Gazette extraordinary, dated 6.5.2002. This control order purported to have been issued in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955 (Central Act 10 of 1955) and in terms of the order of Government of India, Ministry of Consumer Affairs, dated 31.8.2001. Order, 2001, has been issued in supersession of the earlier legal regime, namely A.P. Scheduled Commodities

(Regulation of Distribution by Card System) Order, 1973 issued in G.O.Ms.No.1088, F and A (CS IV) Department, dated 28.9.1973.

13. In the Order, 2001, paragraph 6 defines “Authorised Fair Price Shop” as under: -

> “Authorised Fair Price Shop” means a retain dealer appointed or authorized or approved by or on behalf of the State Government and includes a shop set up by the State Government or a State Government undertaking or a Corporation wholly owned by the State Government or a Co-operative Society for the benefit of Scheduled Castes or Scheduled Tribes under a Government Scheme under clause (5) for sale of all or any of the Scheduled commodities.
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> EXPLANATION: On the commencement of this order in any area every dealer who was appointed, authorized or approved by or on behalf of the State Government (as approved retailer or by any other designation and whose appointment) authorization or approval was in force in respect of any of the Scheduled Commodities immediately before such commencement, shall be deemed to be an authorized fair price shop dealer in that area for supply of those commodities for the purpose of this Order, unless otherwise directed by the State Government or the Collector concerned.”

14. As per the schedule appended to the Order, 2001, kerosene is one of the enumerated essential commodities, which could be supplied by the State Government to any authorized fair price shop or establishment for issue to the consumers.

15. On a true and fair construction of the provisions of the “Explanation” in sub clause (6) of paragraph 2 of Order, 2001, it is apparent that the dealers who were appointed, authorized or approved by or on behalf of the State Government as an approved retailer or by any other designation and whose appointment, authorization or approval was in force in respect of any of the schedule commodities, immediately before commencement of the order, 2001, are to be deemed to be authorized fair price shop dealers in the area for supply of those commodities for the purpose of the Order, 2001, unless otherwise directed by the State Government or the Collector concerned. This provision of the control order, therefore provides legitimacy for the continuum of the operation of all such dealers who were appointed or authorized to do business in the supply of essential commodities, in particular, under the

superseded A.P. Scheduled Commodities (Regulation of Distribution by Card System) Order, 1973, in respect of any of the schedule commodities for which they were so authorized. This right of continuing the business of supply of essential commodities by such earlier dealers is however, subject to contrary directions that might be issued by the State Government or the Collector concerned, after coming into force of the order, 2001.

16. It is neither pleaded, urged or established by or on behalf of the petitioners that any of the hawkers/conventional dealers including the respondents 7 to 9 in the writ petition are disentitled to operate as hawkers/conventional dealers, even after coming into force of the order, 2001 as they were not the dealers appointed, authorized or approved, by or on behalf of the State Government, or that their appointment, authorization or approval was not in force as on the date of the Order, 2001, within the meaning of the "explanation" in sub clause (6) of paragraph (2) of Order, 2001. In the absence of any such demonstration by the petitioner, the petitioner's grievance that allocation of Kerosene quota by the State Government or its agents to such hawkers/conventional dealers is illegal, cannot be countenanced by this Court.

17. This Court is not constituted to resolve every factual dispute, unless such dispute has a foundation in any legal right, which preserves an exclusive right of the claimant to a particular course of action or a benefit under any extant and operative legal environment. As existing dealers' rights to continue to do business in schedule commodities has been preserved to the extent specified in the "explanation" in sub-clause (6) of paragraph 2 of the Order, 2001, subject only to prohibition of continuance of such business by a contrary direction issued by the State Government or the Collector concerned, where there is no such contrary direction issued either by the State Government or the Collector, existing dealers cannot be restrained from continuing business of vending essential commodities to the extent they were so authorized as on the date of order, 2001.

18. The petitioner has failed to place before this Court any order of the State Government or the Collector, prohibiting further business in vending PDS kerosene

by any of the existing hawker/conventional dealers in Kavali town and Mandal. The orders of the State Government in G.O.Rt.No.410 do not either expressly or by any necessary implication prohibit the business of the existing hawkers. It is also neither pleaded nor established by the petitioner that any of the hawkers/conventional dealers of kerosene in Kavalli Town and Mandal are persons in whose favour fresh licenses or authorizations have been issued contrary to the fiat of G.O.Rt.No.419. In the circumstances, the grievance of the petitioner does not commend acceptance by this Court for grant of any relief.

19. Another contention hesitantly urged on behalf of the petitioner is that allocation of a lions' share of 65% of the available kerosene to hawkers/conventional dealers in Kavali town and Mandal against the meager 35% allocated to fair price shop dealers is inequitable. Neither conventional dealers/hawkers nor the fair price shop dealers are seen to have any fundamental or legal right to allotment of any particular quantum or percentage of kerosene meant for distribution in any particular locality in the state. All such dealers are licensees of the scheme of Public Distribution system, whereby they offer their services for distribution of essential commodities on receipt of commission. Fair price shop dealers are authorized to sell a variety of essential commodities, which in addition to kerosene include rice, wheat and such other commodities, whereas conventional dealers/hawkers in kerosene are confined to vend only PDS kerosene. May be they are also entitled to vend other petroleum products on the basis of agreements or licenses granted by petroleum companies or other regulatory agencies of the State. There is nothing on record to permit an analysis and conclusion by this Court that the ratio fixed by the third respondent for allocation of kerosene between conventional dealers/hawkers and the fair price shops is so patently arbitrary as to invite exercise of jurisdiction of this Court in judicial review, which as is well settled does not involve appellate scrutiny of the decision or policy of the State, particularly in orders, which involves a complex analysis and prioritization of several factors.

20. On the above analysis, this Court sees no infirmity in the order of the third respondent, dated 16.09.2004, warranting interference in this writ petition. The writ petition is devoid of merits and is accordingly dismissed.

14.12.2004

Dated: 14th December 2004

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To

1)The Principal Secretary, Government of Andhra Pradesh

Department of Civil Supplies, Secretariat, Hyderabad.
2)The District Collector, Nellore District, Nellore.
3)The Joint Collector, Nellore District, Nellore.
4)The Revenue Divisional Officer, Kavali, Nellore District.
5)The Mandal Revenue Officer, Kavali, Nellore District.
6)The Civil Supplies Deputy Tahsildar, Kavali, Nellore District.
7)2CCs to G.P for Civil Supplies, High Court of A.P.,Hyd.(OUT)

8)2 CD copies.